# **School Law** Review 2006

# Public Employees: First Amendment Rights

### General Rule:

 Public employees' constitutional rights can be restricted by conditions placed upon them by the terms of their employment.

## Exception:

- Speaking as citizens AND
- Addressing matters of public concern
- UNLESS adequate justification for treating them differently



 Holding: When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

## **Implications for Teachers:**

- Additional constitutional interests for academic public employees?
- Official duties?

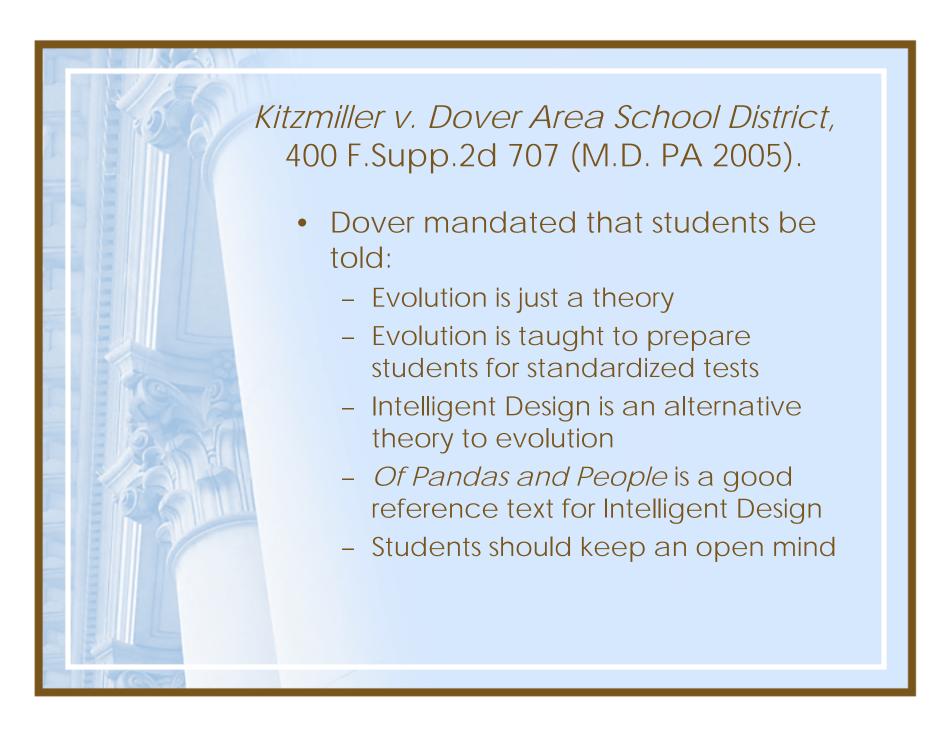


#### The Endorsement Test

 Has the government endorsed religion by its actions?

#### The Lemon Test

- It does not have a secular purpose
  OR
- It's principal or primary effect advances or inhibits religion OR
- It creates an excessive entanglement of the government with religion.





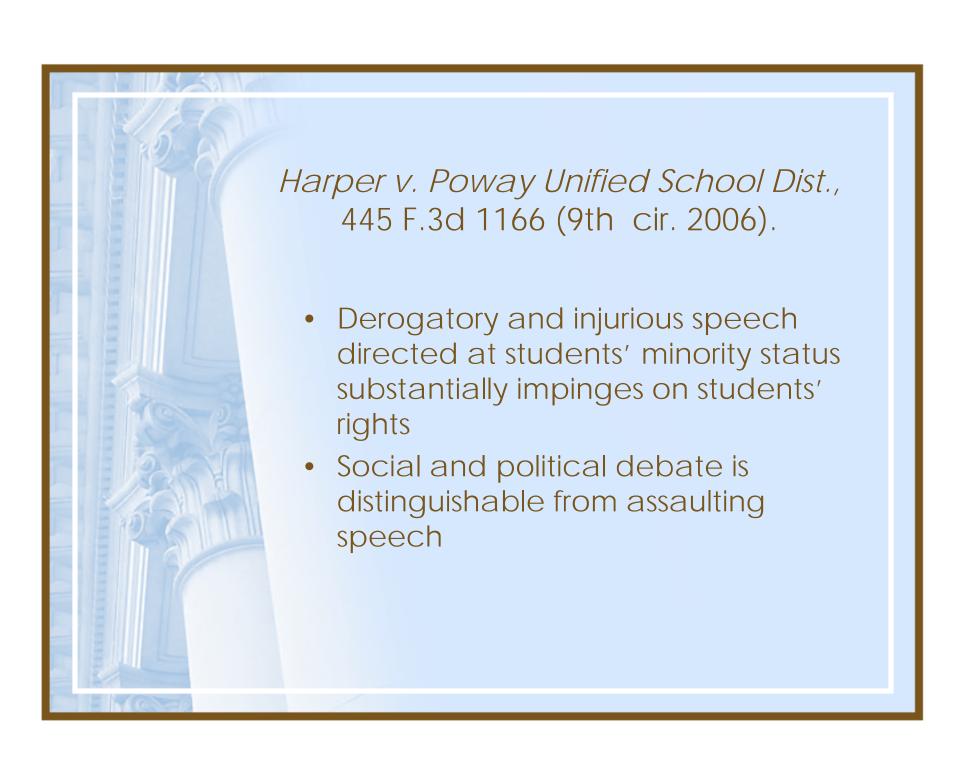
- The court found:
  - ID is religion, not science
  - Dover endorsed ID as a religion
  - The primary effect of reading the statement to the students was to advance ID as religion
  - There is no secular purpose to endorsing ID in the curriculum
- The court's findings were based on:
  - The historical context of the ID movement
  - The actions of the school board members

# School Dress Code: Students' First Amendment Rights:

- General Rules:
  - Conduct is protected when it conveys a particularized message AND it is likely to be understood by those who view it
  - Students do not leave their first amendment rights at the school house gate
- Tests:
  - Tinker
  - The O'Brien Test

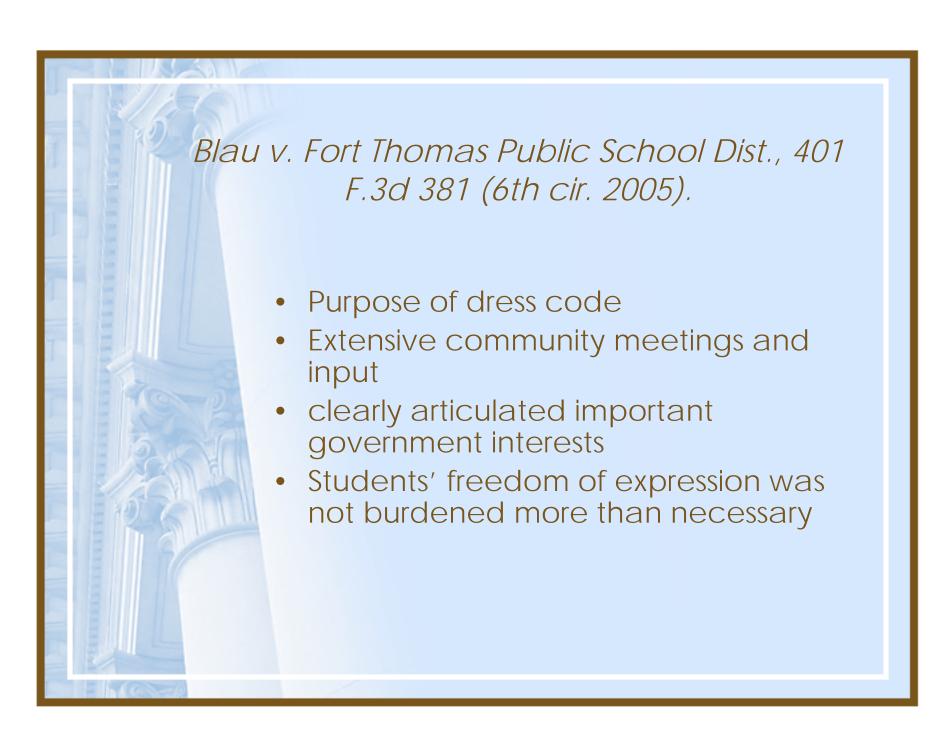


- Student speech/expression can be limited in schools when:
  - the speech would "impinge upon the rights of other students" OR
  - the speech would result in "substantial disruption of material interference with school activities."



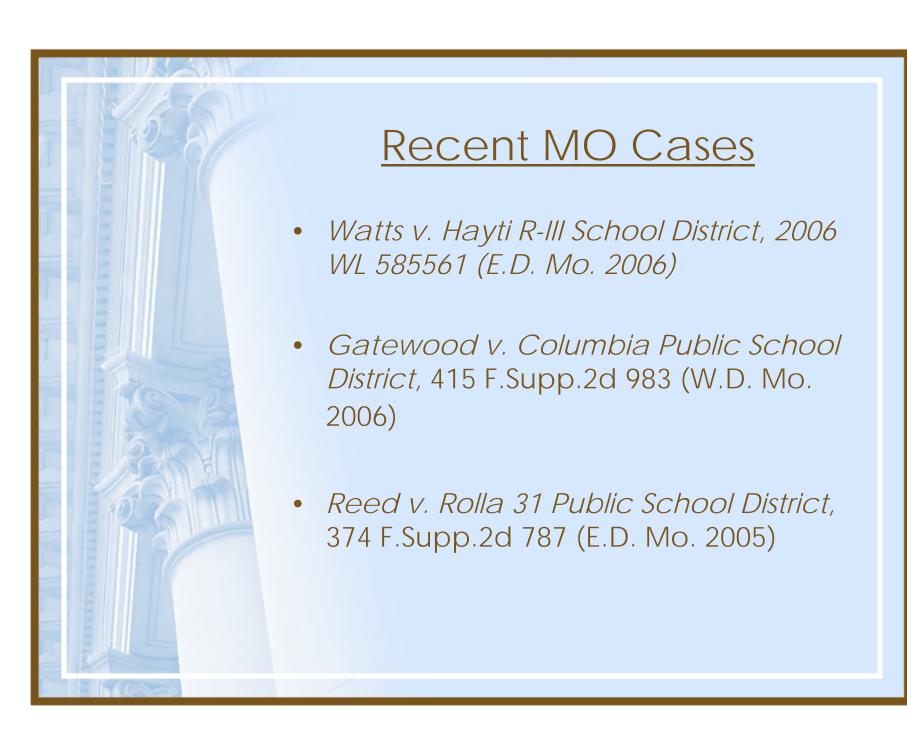


- Restriction on expressive conduct upheld if:
  - unrelated to the suppression of expression AND
  - furthers an important or substantial government interest AND
  - does not burden substantially more speech than necessary to further the interest.





- Employee must present discrimination case:
  - Member of a protected group
  - Meeting the legitimate expectations of employer
  - Suffered an adverse employment action
  - The facts that permit an inference of discrimination
- Employer must articulate nondiscriminatory reason for the adverse employment action
- Employee must rebut this reason





- An inference of discrimination occurs when the employee is replaced by someone not in the same protected class.
- Positive evaluations from previous years do not rebut poor job performance in the current year as a legitimate non-discriminatory reason for non-renewal of contract.
- An employee can demonstrate that the nondiscriminatory reason given is pretext by showing that they were treated differently than a similarly situated individual, not in the protected class.
  - A similarly situated individual must be similar to the employee in all relevant respects.
- Generally, employment practices that are equally and neutrally applied to all employees cannot give rise to an inference of wrongful intention.